

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

TED MARCUM,	:	Case No. C-1-02-425
	:	
Petitioner,	:	JUDGE BECKWITH
	:	
vs.	:	MAGISTRATE JUDGE SHERMAN
	:	
OHIO ADULT PAROLE AUTHORITY,	:	
	:	
Respondent.	:	
	:	

***RESPONDENT OHIO ADULT PAROLE AUTHORITY'S
RESPONSE TO MARCH 8, 2004 ORDER***

On March 8, 2004, this Court issued an Order in which it indicated that its record did not contain the Answer which Respondent filed on February 27, 2003 to this Court's February 10, 2003 Order.¹ The verbatim response that was filed by Respondent follows.

On February 10, 2003, this Court ordered Respondent to determine whether 1995 Butler County Jail medical records still exist with respect to the assault for which Marcum stands convicted. The short answer to this Court query is that said records were destroyed last year. (See, Exhibit B).

Respondent would further note in passing that assuming *arguendo* that Marcum's petition were not time barred, and assuming further that said records still existed, that said records would still **not** be entitled to consideration in federal habeas

¹ Although it inexplicitly does not appear in the docket sheet, as reflected by Exhibit A, the Response was in fact received and filed in this Court on February 27, 2003.

corpus. This is so because 28 U.S.C. Section 2254(e)(2) limits this Court to a consideration of the factual basis of the claim as presented to the state courts. Here Marcum has candidly conceded that he did not present the Butler County Jail medical records to the Ohio courts and he further has not even attempted to set forth a factual predicate that prevented him from obtaining the medical records for presentation to the Ohio courts.

Respectfully submitted,

JIM PETRO (0022096)
Attorney General

s/Stuart A. Cole
STUART A. COLE (0020237)
Assistant Attorney General
Corrections Litigation Section
150 East Gay Street, 16th Fl.
Columbus, Ohio 43215-6001
(614) 644-7233
(614) 728-9327 (Fax)
scole@ag.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of Respondent Ohio Adult Parole Authority's Response to Court Order was sent to Ted Marcum, 239 North Ninth Street, Hamilton, Ohio 45011, via regular U.S. mail on this 15th day of March 2004.

s/Stuart A. Cole
STUART A. COLE
Assistant Attorney General